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Attached is the daily news report for August 25.

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## BUREAU OF LAND MANAGEMENT

### DAILY NEWS REPORT - UTAH

#### **UTAH – TOP STORIES – AUGUST 25, 2017**

- 1. HandleBar Ranch property owners seek resort rezone approval from Grand County Council**

*The (Moab) The Times-Independent, Aug. 24 | Molly Marcello*

Responding to the changing interests of Moab's tourists, the owners of the proposed "HandleBar Ranch" – formerly the Bar-M Chuckwagon – are planning to transition the 45-acre parcel from its western themed, "mom-and-pop" roots into a high quality, mountain bike-focused gathering space.

- 2. Events committee recommends granting 2018 Rally permit**

*The (Moab) The Times-Independent, Aug. 24 | Molly Marcello*

Finding no public safety issues associated with Discount Tire Rally on the Rocks, the Grand County Special Events Coordinating Committee unanimously recommended the county council grant the event's 2018 permit.

- 3. Zinke: 'Some' monument designations clearly outside law**

*The Deseret News, Aug. 24 | Amy Joi O'Donoghue*

SALT LAKE CITY — A summary of Interior Secretary Ryan Zinke's draft monument review released Thursday notes that some monuments' adherence to definitions in the Antiquities Act were either arbitrary or politically motivated, lacked a basis in science or were unsupported by practical resource management.

- 4. Op-ed: National monuments review ended but the fight for our lands doesn't**

*The Deseret News, Aug. 24 | Jeff Clay*

Since April, America's national monuments in Utah have been under review by the Department of the Interior. In response to the DOI's task, given by executive order, to review 27 national monuments, Utahns have written public comments, donated to organizations and spread the word. Yesterday, August 24th, marked the end of this federal review period. But the review closing does not mean our public lands are safe. Utahns cannot forget about our public lands and now become complacent.



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**5. Little Sahara Visitor Center reopens**

*The Deseret News, Aug. 24 | Press Release*

FILLMORE — The Bureau of Land Management's Fillmore field office has reopened the Little Sahara Recreation Area Visitor Center. Operating hours will be Thursday through Monday, 8 a.m. to 4 p.m.

**6. Interior secretary recommends Trump alter at least three national monuments, including Bears Ears**

*The Washington Post, Aug. 24 | Juliet Eilperin and Darryl Fears*

Interior Secretary Ryan Zinke recommended Thursday that President Trump alter at least three dramatic national monuments and change the way others are managed, moves that would represent the greatest reversal of protections for such sites in more than a century.

**7. BLM And 4H Groups Encourage Public To Adopt Growing Number Of Wild Horses**

*Utah Public Radio, Aug. 24 | Bronson Teichert*

Federal scientists and mostly rural interest groups gathered at a conference in Utah this week to discuss the growing number of U.S.-protected wild horses roaming 10 western states.

**8. New report faults controversial BLM agent for mishandling evidence**

*The Salt Lake Tribune, Aug. 24 | Brian Maffly*

While Dan Love was in charge of Bureau of Land Management law enforcement for Utah, rare items known as moqui marbles appeared all over the agency's Salt Lake City headquarters, apparently as gifts and office decor.



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#### **9. Report: BLM agent handed out confiscated Moqui marbles 'like candy'**

*The Deseret News, Aug. 24 | Amy Joi O'Donoghue*

SALT LAKE CITY — In June 2009, the Bureau of Land Management's Dan Love led Operation Cerberus, a raid involving the nation's largest Native American artifacts trafficking case, resulting in 25 arrests.

#### **E&E/NATIONAL NEWS – TOP STORIES**

##### **1. Interior Department calls for changes to national monuments but offers no details. Here's how we got here**

*PBS Newshour, Aug. 24 | Nsikan Akpan*

Interior secretary Ryan Zinke called Thursday for a “handful” of changes to 27 national monuments that have been under review since this spring.

##### **2. The Conservation Alliance Responds to Interior Secretary Ryan Zinke's National Monument Review Summary Report**

*The Conservation Alliance, Aug. 24 | Press Release*

Interior Secretary Ryan Zinke today submitted a report to President Trump in which he reportedly recommends that the President alter the boundaries of some National Monuments designated since January 1996. The Interior Department did not release the full report, and provided no specifics about which monuments would be impacted, but Secretary Zinke told the Associated Press that the recommended changes would reduce the size of a “handful” of the protected areas. Zinke also told the AP that the report does not recommend rescinding any National Monument designations entirely.

##### **3. Smart Move to Repeal Department of Interior 'Valuation Rule' on Minerals**

*Competitive Enterprise Institute, Aug. 24 | Marlo Lewis, Jr.*

On August 7, the Department of Interior's Office of Natural Resources Revenue (ONRR) repealed the Obama administration's minerals Valuation Rule. The Obama rule revised longstanding regulations governing how leaseholders on federal and Indian lands are to value the coal, oil, or gas they produce for the purpose of calculating royalty payments.



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#### **4. Bipartisan House Amendment Would Restore Wild Horse Protections**

*Yuba.net, Aug. 25 | Press Release*

Aug. 25, 2017 – Reps. Dina Titus, D-Nevada, Peter King, R-New York, and Jared Polis, D-Colorado, on Thursday filed an amendment to the Interior Appropriations bill that would restore protections for wild horses and burros. It comes in response to the July 19 passage, by House Appropriations Committee voice vote, of an amendment by Rep. Chris Stewart, R-Utah, which would allow the Bureau of Land Management to kill healthy unadopted wild horses and burros.

#### **5. The Distant Conservative Heritage of the National Park Service**

*The National Review, Aug. 25 | Philip H. DeVoe*

When Ferdinand V. Hayden returned from his exploration of the area that is now Yellowstone National Park, he warned President Ulysses S. Grant that “vandals who are . . . waiting to enter into this wonder-land, will in a single season despoil . . . these remarkable curiosities, which have required all the cunning skill of nature thousands of years to prepare.” His words led to the beginning of the National Park system, and to the creation, 101 years ago today, of the National Park Service (NPS).

#### **6. NATIONAL MONUMENTS: Courts backed presidents in past Antiquities Act disputes**

*E & E News, Aug. 25 | Jennifer Yachnin*

Opponents of Interior Secretary Ryan Zinke's review of national monuments are vowing to challenge the Trump administration in court if it attempts to roll back the boundaries of any site — setting up a legal fight over limits of the Antiquities Act of 1906.

#### **7. OBITUARY: Former Interior Secretary Cecil Andrus dies at 85**

*E & E News, Aug. 25 | AP/Los Angeles Times*

Former Interior Secretary Cecil Andrus, who helped conserve millions of acres of Alaskan land under the Carter administration, has died at age 85.



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### 8. OIL AND GAS: What's driving high break-even prices on public lands?

*E & E News, Aug. 25 | Pamela King*

Oil and gas producers might have a harder time breaking even in shale plays containing federally controlled land, but that may have little to do with the regulatory and permitting burdens associated with extracting hydrocarbons from public acreage, energy researchers say.

### 9. DOE: Can coal and nuclear save the grid?

*E & E News, Aug. 25 | Peter Behr*

"Fuel security" has jumped to the top of the hazards list confronting the U.S. electric power grid, elevated most recently in the Energy Department staff report to Secretary Rick Perry on electricity markets and reliability.

### 10. DAKOTA ACCESS: Enviro groups call pipeline lawsuit an attack on free speech

*E & E News, Aug. 25 | AP/Billings Gazette*

Environmental groups fighting a lawsuit by the developer of the Dakota Access pipeline are calling the suit an attack on free speech.



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#### UTAH – FULL STORY

##### **1. HandleBar Ranch property owners seek resort rezone approval from Grand County Council**

*The (Moab) The Times-Independent, Aug. 24 | Molly Marcello*

Responding to the changing interests of Moab's tourists, the owners of the proposed "HandleBar Ranch" – formerly the Bar-M Chuckwagon – are planning to transition the 45-acre parcel from its western themed, "mom-and-pop" roots into a high quality, mountain bike-focused gathering space.

Located on state trust land five miles south of Moab, the new owners have high hopes the Grand County Council approves a rezone request from Range Grazing to Resort Special – so they can start building their vision of a mountain biking haven.

"When we looked at it, connected with Bar-M trails, what a better venue to have what we call the HandleBar Ranch," said John Hall, the new owner of the property.

Currently under lease with the School of Institutional Trust Lands Administration (SITLA), the ultimate discretion for use of the 45-acre parcel rests with the state organization. However, SITLA representatives say they still move through local land use requirements, consulting with municipalities to the "greatest extent possible."

"SITLA tries to work with local communities on each project as much as possible because most communities have the same vision as SITLA and see its properties as a great resource for economic development," said resource specialist Bryan Torgerson.

According to Torgerson, SITLA feels that the rezone and future plan for the 45-acre parcel will improve the area significantly.

"The new HandleBar Ranch operators appear to be very sensitive and thoughtful," Torgerson said. "SITLA believes that the HandleBar Ranch will be a great compliment to the area and will provide excellent services to those already taking place there now."

Grand County Community Development Director Zacharia Levine affirmed Torgerson's sentiment during a county council meeting Aug. 15. A rezone of the area – called the "North Moab Area Recreation Corridor" in county documents – is currently supported by the county's future land use plan map.



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“That section of the general plan identifies the area as being appropriate for tourism development and resort commercial development,” Levine said. “So, this fits perfectly within what is targeted for that area.”

Levine said the Resort Special zone would also complement existing parcels in the area, including developments like the Moab Under Canvas lodging area, the Moab Giants Dinosaur Park and the Archview Campground.

Valerie Brown – who owned the Bar-M Chuckwagon with her husband Alan for decades – completely agrees.

“It’s totally in line with what the county has wanted for the last twenty years,” Brown said.

The Browns held the lease on the SITLA lands for almost twenty years, operating their western dinner theater on a conditional use permit. Since the development of the adjacent mountain bike trails came with little revenue for the Bar-M Chuckwagon, however, Brown said they decided to shutter the establishment in 2016, simply tired of “eating dust.”

“People seemed to lose interest in the cowboy dinner show and we were losing money like crazy,” Brown said. “We decided that people just wanted to mountain bike out there.”

That’s when the Brown’s old college friend Hall stepped in. With a career’s worth of experience developing recreation venues, Brown said that Hall truly has a vision for the property.

“[Hall] has the resources, the creativity, the imagination, and the team to make it all happen [and] I’m totally thrilled,” Brown said. “I think it’s going to enhance Moab as far as mountain biking goes ... It will be beautiful, high quality and a great asset.”

Hall told the county council that he expects the HandleBar Ranch to complement the changing tastes in tourism for that area.

“I’ve been coming out [to Moab] because Valerie and Alan are dear friends that operated the Bar-M Chuckwagon. When I realized they were ready for a change, I thought what a great opportunity to see what we might be able to do here in Moab,” Hall said. “Since I’ve been coming out twenty years, and watched the changes and loved the area, it seemed the right time to do something.”

According Hall, the HandleBar Ranch would expand the existing use of the property to offer approximately 60 to 70 units of overnight lodging, some employee housing units, and resort amenities like a pool and bike-focused areas including work stations and bike washes.



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“We don’t want anything to be on top of each other, we’re clustering some of it so it minimizes the impact on the total area,” Hall said. “... It’s not huge, it’s more about having a personality. We wanted to have a property that looks nice, blends in with the environment, and be a place where folks who are staying there are very comfortable.”

Hall said that the ultimate goal of HandleBar ranch will be to support existing bike and guiding businesses by providing amenities and gathering spaces near the Moab Brand trails.

“It supports everything that’s already going on there,” Hall told the county council. “... I think we can also bring other quality industry specific events to the area in a very positive way to take advantage of the recreation area that’s there but also benefit those that are also using the area.”

The council will likely make a recommendation on a rezone from Range Grazing to Resort Special during their next meeting, Sept. 5.

For more information about issue, visit page 325 of the council’s Aug. 15 agenda packet, found at [www.grandcountyutah.net](http://www.grandcountyutah.net). Comments may be emailed to: [council@grandcountyutah.net](mailto:council@grandcountyutah.net), or mailed to: Grand County Council, 125 E. Center St., Moab, UT 84532.

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## 2. Events committee recommends granting 2018 Rally permit

*The (Moab) Times-Independent, Aug. 24 | Molly Marcello*

Finding no public safety issues associated with Discount Tire Rally on the Rocks, the Grand County Special Events Coordinating Committee unanimously recommended the county council grant the event’s 2018 permit.

Committee members reached their recommendation during a special meeting Aug. 17, after considering their special events ordinance and public safety data — alongside concerns raised by Moab City and Mayor Dave Sakrison.

Committee member and Moab Area Travel Council Executive Director Elaine Gizler said quality of life issues raised by citizenry and Moab City were not taken lightly.

“We went point-by-point through all of the comments, looked at all the replies whether for or against,” Gizler said. “We really took everything seriously. When citizens express their views, we want to make sure we’re approaching it correctly.”



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Held over five days in May, Rally on the Rocks typically garners more than 5,000 participants who come to drive their UTVs (utility task vehicles) and side-by-sides on popular trails in the surrounding area.

Mayor Sakrison, in a July 13 letter to the county, voiced concerns about noise, public safety and quality of life issues once those motorized vehicles are off the trail and in residential neighborhoods. State law allows UTVs equipped to “street legal” standards to drive on local roads, streets and highways.

“The roar of the machines throughout neighborhoods from Walker to Huntridge greatly impacts the quality of life for our citizens,” Sakrison wrote. “It is the opinion of the [city’s] leadership that the event is significantly, negatively impacting the quality of life for our residents and the quality of experience for any other visitors to Moab not affiliated with the [Rally on the Rocks] event.”

In addition to Sakrison’s letter, Moab City solicited comments about the event, which they gave to the special events coordinating committee last month. According to the county, that request for comments garnered 42 letters in favor of no longer permitting the event and 37 letters in favor of retaining it.

The county’s events committee is much less divided on Rally on the Rocks, however, when compared to the comments received by the city.

Considering their special events ordinance, the committee discussed whether Rally on the Rocks posed “a significant threat to public health, welfare, or safety, or...[an] unreasonable inconvenience or cost to the public” and found no grounds for denial.

“I don’t go on more calls for Rally on the Rocks than I do any other time of year,” said Grand County Emergency Medical Services (EMS) Director Andy Smith. “... We all have this idea of public safety, we want to make sure we can protect the citizens and mitigate additional impacts from events. I just don’t think the information bears out that there’s a significant increase in public safety issues when it comes to specifically Rally on the Rocks.”

In addition to Gizler and Smith, voting members on the committee include the county’s road, building and planning departments, as well as the heads of various public safety agencies like the Grand County Sheriff’s Department and the Moab Valley Fire Department.



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Eventually, Smith said that the county's committee might have to broach more difficult conversations about events that stretch public safety resources — but that's just not the case for Rally on the Rocks, he said.

"It's going to end up where there's so many [events] where we just don't have people to [staff it]. But that's not the case here," Smith said. "They've been easy to work with, and they're paying for it."

Grand County Sheriff Steve White agreed. He added that Rally on the Rocks pays for "event-specific" costs related to public safety, and should not pay for extra law enforcement shifts — as suggested in some of the comments.

"We try to step up enforcement year-round with UTVs to make sure that that presence is there," White said. "... Should these guys pick up the tab for [extra shifts] for UTV enforcement? I don't agree with that. I think it's separate from the event, it's just on the road."

The committee also discussed UTV noise, a central issue for many who don't favor permitting Rally on the Rocks. Although some committee members said they are also personally affected by noise, they had difficulty pinpointing whether Rally on the Rocks was solely responsible for that impact.

"I understand the noise concern, I live close to where it is," Smith said. "But it's constant, all spring, all summer. It's not necessarily associated with just this event."

White said that the sheriff's department does receive UTV noise complaints. But those complaints are usually targeted at the "five or six people" driving the motorized vehicles at night that may or may not be associated with the event, he said.

According to organizer Sean Reddish, Rally on the Rocks tries to reduce its noise impacts each year, including limiting how quickly participants can accelerate on the highways, which he says reduces the amount of noise. And last year, event organizers worked with the Grand County Sheriff's Department to reroute certain guide-led trails away from neighborhoods.

For the sheriff's department, White said that the Rally on the Rocks organizers are "super" to work with.



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“Anything we’ve asked, anything we’ve done, [they’ve] worked with us on,” White said. “... Some events we have pretty much say ‘to hell with you, we’re going to do what we’re going to do.’ These guys haven’t been that way. In my opinion, they’ve stepped in and tried to be part of our community.”

In addition to paying for law enforcement and medical services, Reddish added that Rally on the Rocks also contributes to the area through transient room taxes and charitable donations.

In 2016, he said, Rally on the Rocks gave a total of \$15,000 to the BEACON Afterschool Program and the Helen M. Knight Elementary School food program. And in 2015, the event donated \$35,000 to Grand County Search and Rescue.

“That’s \$45,000 that have stayed right here to impact this economy. That’s not talking about tourism dollars that 1,000 participants has every day,” Reddish said.

But Sakrison told The Times-Independent he still questions the impacts to the overall economy when compared with quality of life issues for Moab’s residents.

“We’re at the stage of the game in the event process where we need to ask — what events are appropriate for this community? We might need to be more selective,” Sakrison said.

For Moab City’s part, Sakrison said that they will step up their UTV enforcement while continuing to work on legislative changes that might remove such vehicles from residential streets.

“I’m going to speak up for the people that live here. This issue struck a chord,” Sakrison said. “I’ve had people coming up to me saying, ‘thank you, thank you for bringing this up.’”

The Grand County Council may discuss the Rally on the Rocks issue during their next regular meeting Sept. 5. To comment on Rally on the Rocks, or any other special event throughout the year, email: [council@grandcountyutah.net](mailto:council@grandcountyutah.net). Comments can also be mailed to: Grand County Council, 125 E. Center St., Moab, UT 84532.

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#### 3. Zinke: 'Some' monument designations clearly outside law

*The Deseret News, Aug. 24 | Amy Joi O'Donoghue*

SALT LAKE CITY — A summary of Interior Secretary Ryan Zinke's draft monument review released Thursday notes that some monuments' adherence to definitions in the Antiquities Act were either arbitrary or politically motivated, lacked a basis in science or were unsupported by practical resource management.

The executive summary made public is part of a more detailed report of recommendations delivered to the White House as part of a 120-day review of national monuments that began in April.

An initial list of 27 monuments was whittled to 21, but two contentious designations in Utah — Bears Ears and Grand Staircase-Escalante — remained.

The review is the result of an executive order issued by President Donald Trump after complaints by monument critics that past presidential declarations fell outside the scope of the 1906 Antiquities Act and were more about politics than meaningful conservation.

Zinke told the Associated Press earlier Thursday that his executive summary recommends changes to a "handful of monuments," and that no past designations would be rescinded altogether, including the Bears Ears and Grand Staircase-Escalante national monuments.

Additionally, Rep. Chris Stewart, R-Utah, has said Zinke's executive summary will likely lack specifics and be based on broad principles and tenets of the Antiquities Act.

Rep. Rob Bishop, R-Utah, said in a teleconference Thursday about the monument review that he believes whatever recommendations are ultimately made, they will be accompanied by details of why boundaries were reduced in context with provisions of the Antiquities Act.

That law spells out that land can be set aside by a U.S. presidential declaration to protect cultural resources, but in the "smallest area compatible" to achieve the objects' protections

Zinke's summary said some designations clearly fell outside that federal law.



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"Adherence to the act's definition of an 'object' and 'smallest area compatible' clause on some monuments were either arbitrary or likely politically motivated, or boundaries could not be supported by science or reasons of practical resource management," the document states.

"Despite the apparent lack of adherence to the purpose of the act, some monuments reflect a long public debate process and are largely settled and strongly supported by the local community," according to the summary.

Other monuments remain controversial, the report states, and designations overlap federal land designations already in place or contain significant private property within their boundaries.

"No president should use the authority under the Antiquities Act to restrict public access, prevent hunting and fishing, burden private land, or eliminate traditional land uses, unless such action is needed to protect the object," Zinke said in a prepared statement.

"The recommendations I sent to the president on national monuments will maintain federal ownership of all federal land and protect the land under federal environmental regulations, and also provide a much-needed change for the local communities who border and rely on these lands for hunting and fishing, economic development, traditional uses, and recreation."

Monument supporters blasted the absence of specific recommendations Thursday.

"This secrecy shows the Trump administration knows their attack on national monuments is wildly unpopular," said Jennifer Rokala, executive director of the Center for Western Priorities. "If Secretary Zinke expects Americans to be thankful because he wants to merely erase large chunks of national monuments instead of eliminating them entirely, he is badly mistaken."

Bishop, during his teleconference, said the review was an important path to foster more dialogue over the process used to designate national monuments.

He and other members of Utah's congressional delegation have been universal in their condemnation of former President Barack Obama's designation of Bears Ears last December and the way Grand Staircase was designated in 1996.

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#### 4. **Op-ed: National monuments review ended but the fight for our lands doesn't**

*The Deseret News, Aug. 24 | Jeff Clay*

Since April, America's national monuments in Utah have been under review by the Department of the Interior. In response to the DOI's task, given by executive order, to review 27 national monuments, Utahns have written public comments, donated to organizations and spread the word. Yesterday, August 24th, marked the end of this federal review period. But the review closing does not mean our public lands are safe. Utahns cannot forget about our public lands and now become complacent.

The DOI's recommendations will advise the government on whether to reduce, resize or rescind, or continue to protect, 11 million acres of national monuments across the nation. While Zinke hasn't recommended to not eliminate any monuments, he has proposed boundary adjustments. There is no indication that the monuments in Utah, Bears Ears and Grand Staircase-Escalante, will make it through the review unscathed.

With or without a thumbs-up from the DOI, our national monuments and wider public lands remain threatened by our own statewide lawmakers. Already pressing ahead with an agenda to seize control despite what the federal government recommends, Utah's Legislature has set aside \$14 million of taxpayer money to sue the federal government for ownership of public lands.

When asked by a pollster last year if they agreed with then-candidate Donald Trump that states should not be able to take over public lands, 51 percent of Utah respondents supported his position, while only 36 percent opposed it. Despite the sentiment against states taking over public lands, the Utah Legislature wants to move 31 million acres of public lands from the American people's hands to the State of Utah's. Such a transfer removes democratic opportunities for citizen input, puts an estimated additional \$100 million burden on Utah taxpayers annually, hinders the state's significant outdoor recreation economy and endangers historically, culturally and scientifically significant regions.

The word "public" in "public lands" means every American owns the land. Public lands are managed by several federal agencies, but the American people remain the ultimate owners. State-owned land, however, can be taken from the people and sold to the highest bidder, restricting access and often decimating the land.



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To keep our public lands open and welcome to all, we need continual local action throughout Utah. Translating advocacy efforts from the national level to the local level is simple and even more effective. There are a multitude of platforms where you can make your concerns heard, including calling your state representative, sending them a letter or reaching out to them on social media; attending upcoming events around National Public Lands Day on Sept. 30; educating yourself on upcoming bills, or joining local organizations fighting to protect our public lands.

Public lands provide accessible recreation to all, be they hunters, anglers, hikers, campers, horsemen and off-road vehicle users. Communities near protected public lands experience significant economic growth. Most important, they represent our commitment to preserve our country's outdoor heritage for future generations.

We are the “public” in public lands, and to keep public lands in our hands, we, the people, must take action and be the stewards of our land.

*Jeff Clay is a landscape and travel photographer based in Salt Lake City for over 20 years. He travels throughout the world but loves best the wide-open, untrammeled spaces of America’s Southwest and Great Basin and volunteers with the Sierra Club Utah to help preserve it.*

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#### 5. Little Sahara Visitor Center reopens

*The Deseret News, Aug. 24 | Press Release*

FILLMORE — The Bureau of Land Management’s Fillmore field office has reopened the Little Sahara Recreation Area Visitor Center. Operating hours will be Thursday through Monday, 8 a.m. to 4 p.m.

The visitor center closes seasonally in midsummer, due to high temperatures and decreased visitation.

The recreation area is 60,000 acres of sagebrush flats, juniper-covered hills, and free moving sand dunes located in Juab County. It offers 255 improved campsites with access to 40 toilets, two sources for potable water and 16 miles of paved roads.



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Admission is \$18 per vehicle per night or \$120 for an annual pass. For more information, log on to blm.gov.

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#### **6. Interior secretary recommends Trump alter at least three national monuments, including Bears Ears**

*The Washington Post, Aug. 24 | Juliet Eilperin and Darryl Fears*

Interior Secretary Ryan Zinke recommended Thursday that President Trump alter at least three dramatic national monuments and change the way others are managed, moves that would represent the greatest reversal of protections for such sites in more than a century.

Zinke proposed reducing the size of Bears Ears and Grand Staircase-Escalante national monuments, both in Utah, and Cascade-Siskiyou National Monument in Oregon, according to multiple individuals briefed on the decision. Together, the Utah sites span more than 3.2 million acres.

Zinke's report, which the White House did not release, launches what will be a legal and political battle over a relatively obscure law that grants a president wide latitude in preserving federal lands and waters that are threatened.

After spending nearly four months examining more than two dozen monuments established by Bill Clinton, George W. Bush and Barack Obama under the 1906 Antiquities Act, Zinke is calling for less major change than some conservatives advocated. But in addition to radically shrinking Bears Ears and perhaps other sites, he is pushing to allow activities at some monuments that previous presidents restricted or barred outright.

"The recommendations I sent to the president on national monuments will maintain federal ownership of all federal land and protect the land under federal environmental regulations," Zinke said in a statement, "and also provide a much needed change for the local communities who border and rely on these lands for hunting and fishing, economic development, traditional uses, and recreation."

The review process was triggered by an executive order Trump signed April 26. It pitted those who have felt marginalized by federal actions over the past 20 years against backers who see the



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sites as bolstering tourism and recreation while safeguarding important relics, environments and species.

In his statement, Zinke described his proposal as a reasonable remedy to years of presidents' unilaterally exercising their authority without giving adequate consideration to the people living closest to these public lands.

"No President should use the authority under the Antiquities Act to restrict public access, prevent hunting and fishing, burden private land, or eliminate traditional land uses, unless such action is needed to protect the object," Zinke said.

Yet John Leshy, who served as Interior's solicitor in the Clinton administration and is now a professor at the University of California's Hastings College of Law, noted that no president had ever sought the kind of rollbacks Trump is contemplating.

"The scale of this, and the sweep of this, is definitely unprecedented," Leshy said.

Ethan Lane, executive director of the public lands council at the National Cattlemen's Beef Association, said the administration's push reflected that "they're concerned with rural America."

"They've been talking to groups that feel like maybe they weren't included in the process," Lane said. "Ranchers across the West are certainly part of that."

The Interior Department gave no specifics of Zinke's recommendations, instead releasing a report summary that described each of the 27 protected areas scrutinized as "unique."

Even so, his proposal takes direct aim at several, according to several individuals who asked for anonymity because the report has yet to be made public.

The most controversial site, the 1.35 million-acre Bears Ears, was designated by Obama last year. Zinke had called for revising its boundaries in an interim report in June, and he stayed with that in recommending a "significant" reduction in its size Thursday, an administration official said.

A White House official confirmed that Trump had received the report but would not say when it would be released or when the president would act on it.



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Zinke's statement addressed the huge amount of public input the department received regarding the sites being scrutinized. "Comments received were overwhelmingly in favor of maintaining existing monuments and demonstrated a well-orchestrated national campaign organized by multiple organizations," he said.

He acknowledged supporters' point that monuments can bring economic benefits to local communities. But he also noted opponents' concerns that designations had translated into reduced public access, confusing management plans "and pressure applied [to] private land owners . . . to sell."

Zinke, who visited seven monuments as part of his review, did not recommend abolishing any. Over the summer he already had disclosed that six sites were no longer under scrutiny; an aide said there was little to no local opposition to each.

With the remaining monuments, some of the key constituencies most critical of sweeping restrictions on federal lands and waters — ranchers, fishing operators and local Republican politicians — won key concessions in the secretary's final set of recommendations.

Massachusetts Lobstermen's Association Executive Director Beth Casoni, who met with Zinke in Boston in June, wanted the administration to shrink the Northeast Canyons and Seamounts Marine National Monument "to the size of a postage stamp."

Within the monument's 4,913 square miles "is highly profitable, sustainable protein fishing ground" where Casoni said fishermen pursuing tuna, cod and sea bass and other fish have been barred. Under last year's proclamation by Obama, those working lobster and crab pots have seven years before having to pull them.

Environmental groups have made it clear that they will file legal challenges in an effort to preserve sites' existing boundaries and protections.

While Congress can alter national monuments easily through legislation, presidents have reduced their boundaries only on rare occasions.

Woodrow Wilson nearly halved the acreage of Mount Olympus National Monument, which Theodore Roosevelt had established six years earlier. In 1938, the U.S. attorney general wrote a formal opinion saying the Antiquities Act authorized presidents to establish a monument but did not grant them the right to abolish one, and several legal scholars argue that Congress indicated



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in the Federal Land Policy and Management Act of 1976 that it reserved the right to alter any existing monument.

Robert D. Rosenbaum, who serves as counsel to the National Parks Conservation Association, said Wednesday that no president has sought to shrink a monument's boundaries in the past four decades. "If the president attempts unilaterally to take adverse action on any of the monuments under review, he would be on very shaky legal ground, and we expect the action would be challenged in federal court," he said.

Sen. Maria Cantwell of Washington state, the top Democrat on the Energy and Natural Resources Committee, issued a scathing critique of the process the administration was using to scale back the designations.

"Teddy Roosevelt would roll over in his grave if he could see what Donald Trump and Ryan Zinke are trying to do to our national treasures today," she said. "Secretary Zinke's secret report to the president is the latest step in a rigged process to try and turn over our public lands to oil and gas companies."

Native American officials have lobbied hard to preserve Bears Ears, which boasts tens of thousands of archaeological sites as well as ancestral Pueblo rock art. Seven tribes in Utah and the Fort Peck Assiniboine and Sioux Tribes of Montana, which counts Zinke as an adopted member, passed resolutions this month calling for its boundaries to remain in place.

But many Western Republicans criticized such large protected areas as a distortion of the law's original intent. In a call with reporters Thursday, House Natural Resources Committee Chairman Rob Bishop (R-Utah) said that "Congress never intended one individual be given the power to unilaterally dictate land management policies for enormous swaths of public land."

"It's about how we protect our resources, not if we protect them," said Bishop, noting that Obama had applied his authority under the Antiquities Act to more than 550 million acres of land and sea. "That's just under 190,000 acres of land and water locked up for every day he was in office."

Utah has become a flash point for tensions over the law. With Grand Staircase-Escalante, Clinton's designation stopped a proposed coal mine and the jobs that would have accompanied it. Kane County Commission Chairman Dirk Clayton, whose county includes the monument,



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said in an interview Tuesday that “extreme conservation groups want to protect and tie up the land.”

Nicole Croft, executive director of Grand Staircase-Escalante Partners, refuted such claims — in part by citing language in the monument’s proclamation that, for example, specifically maintains existing permits for livestock grazing. She said commissioners “refused to even sit down at the table” with the monument’s supporters or to acknowledge how it has helped to power the local economy.

In Cascade-Siskiyou on the -Oregon-California border, ranchers have pushed back even as scientists and conservationists successfully lobbied to expand it to address climate change and other environmental threats. Clinton established the monument in 2000, and Obama expanded it to 113,000 acres in January.

The Klamath, Siskiyou and Cascade mountain ranges intersect within the monument, as do several distinct ecosystems that provide for a vast biodiversity of plant and animal species. Dave Willis, who chairs the Soda Mountain Wilderness Council, noted that a 2008 Bureau of Land Management study concluded that grazing was degrading the native habitat. His group has spent more than \$1 million buying out ranchers’ permits.

But John O’Keeffe, president of the Oregon Cattlemen’s Association, said ranchers were under pressure to sell and had changed their practices over time. “We’re doing a pretty darn good job now,” he said.

Management changes the administration imposes on these protected sites may be as significant as any shifts in boundaries. Opponents of monuments, many of whom supported Trump, complained of being barred from grazing, drilling and hunting in some cases. Interior could provide more access for cattle, the oil and gas industry, vehicles and hunters.

At marine monuments, Zinke heard stakeholders complain about being denied access to rich troves of fish, lobsters and crabs.

William Aila, a Native Hawaiian fisherman and former chair of the state’s Land and Natural Resources Department, said in an email that federal authorities had restricted commercial fishing in Papahanaumokuakea Marine National Monument for a reason.



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“If commercial fishing is allowed, this administration is clearly listening to industry and putting dollars before common sense,” he said.

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#### **7. BLM And 4H Groups Encourage Public To Adopt Growing Number Of Wild Horses**

*Utah Public Radio, Aug. 24 | Bronson Teichert*

Federal scientists and mostly rural interest groups gathered at a conference in Utah this week to discuss the growing number of U.S.-protected wild horses roaming 10 western states.

Utah officials, ranchers and even some federal officials have argued that swollen populations of wild horses, an icon of the American West, have created an expensive government problem of starving animals and damaged rangelands. Other groups have a solution to help with the wild horse population.

The Bureau of Land Management and 4-H groups have teamed up to start a wild horse adoption program in Utah. Lisa Reid, the public affairs specialist for the Utah Wild Horse and Burro Team at the BLM, said the current population nationwide is at 72,000 wild horses.

“When you have numbers that are as high as that, the impacts you see are not only impacts on the range, the forage the water sources, but also on the horses’ body conditions,” Reid said. “We walk a tight line, or a very fine line, between keeping the general public happy, those that have interest in wildlife, or livestock grazing, or recreation on the range, or also those in the wild horse community that are interested in making sure the horses are taken care of.”

Kim Christensen is the volunteer club leader for 4-H Horse Program and helps with the Utah State University 4-H mustang program. Members of the club train wild horses that will later be adopted to private individuals. She said the adoption program has been incredible for those who have been involved. However, the horses aren’t being adopted fast enough. If the horses aren’t adopted after the age of ten, they are sent to the BLM’s facilities in the Midwest, but cost the government \$50,000 during the lifetime of one horse.

“The adoption rate has gone down drastically,” Christensen said. “It’s not easy to find horse property here in Davis County. It’s hard for people to have the facility to adopt them. That’s



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what this program is trying to help is maybe if we can get some of these horses gentle then maybe it'll be easier to adopt them out into some of these homes."

Christensen and Reid both agree that it takes time and patience. They also encourage people with past experience to adopt these horses, because they are still wild. Ryan and Katelynn Adams of Cache Valley adopted a wild horse a few months ago. Ryan grew up with horses and had worked with wild ones before.

"Basically we had just brought the horse home," Ryan said. "I ended up purchasing it out in Kansas. It's a 2,000 acre ranch. It's basically ran as a wild horse and it's not brought in except for on sell day and that's it."

Now Katelynn struggles to feed her baby his bottle because of the cast on her right arm.

"I've been around horses that I've been able to touch and even colts that I've been able to touch at their parent's house," Katelynn said. "Here I am thinking, oh okay, it's a horse I can touch it and it'll be fine. The first time I reached a little further and touched him a little bit and then time we got close and I went from his belly back to his hip and he told me, 'hey, it's not okay.' He kicked and I just remember pulling it out, 'oh crap, that's broke.'"

The BLM and 4H group will be hosting an adoption event on September 9th where the public can learn more about the adoption process and tips to have a positive experience with wild horses.

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#### **8. New report faults controversial BLM agent for mishandling evidence**

*The Salt Lake Tribune, Aug. 24 | Brian Maffly*

While Dan Love was in charge of Bureau of Land Management law enforcement for Utah, rare items known as moqui marbles appeared all over the agency's Salt Lake City headquarters, apparently as gifts and office decor.

A new report targeting the embattled federal lawman concluded Love misappropriated the strange, naturally-occurring globes, which were evidence in an ongoing criminal probe, and instructed a subordinate to conceal his misconduct and thwart a congressional enquiry.



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The Department of Interior's Office of Inspector General (OIG) posted the report Thursday at the request of House Natural Resource Committee, chaired by Utah's Rep. Rob Bishop. Committee staff confirmed the unnamed officer implicated in the report is the controversial Love, who the BLM has since transferred.

Bishop said he expects Interior to take action against Love's alleged misconduct that includes destruction of federal records and defiance of congressional document requests.

"The people of Utah and Nevada — and the American taxpayers — deserve better," Bishop said. "I look forward to seeing how this Administration responds to the unethical behavior uncovered by the report. We must take steps to restore trust in federal law enforcement officers and hold employees accountable for their mismanagement of our taxpayer resources."

For years, Utah politicians have singled out Love as the embodiment of federal overreach on public lands, citing his arrogance toward local sheriffs as lawmakers sought ways to limit BLM law enforcement. Love supervised the undercover sting that led to the 2009 arrests of two dozen people for trafficking looted artifacts and the failed effort in 2014 to impound Cliven Bundy's cattle from public lands around Bunkerville, Nev.

The family of James Redd, a suspect in the artifacts case, blame Love for the Blanding physician's suicide following armed officers' raid on his home and the interrogation Love conducted in Redd's garage. The Redds' wrongful death lawsuits have been thrown out of court.

Love, who could not be reached Thursday, declined to be interviewed by OIG investigators on the advice of counsel.

Earlier this year, the OIG faulted Love for pressuring Burning Man organizers to give special access to the multi-day arts festival in Nevada's Black Rock Desert to friends and family.

The moqui marble caper stemmed from the BLM's 2012 criminal investigation into the removal of thousands of the geological oddities from a national park. Moqui marbles are spherical accretions of the mineral hematite that erode from southern Utah's sandstone formations and collect in depressions.

Officers had seized the marbles and stored them in 80 five-gallon buckets at the BLM's evidence room in Salt Lake City. A University of Utah geology professor estimated their retail at between \$160,000 and 520,000.



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In 2016, as officers were counting the purloined marbles, according to the report, Love told them they could each take one and display it on their desks. Love also instructed a subordinate to give him three of four of the best marbles which he intended to give to a BLM contractor as a gift.

“The subordinate told us he ‘had a bad feeling’ about removing the marbles from evidence, but he did not question the instructions because the senior manager was a law enforcement official and was ‘scary,’” the report states.

Others BLM staffers received marbles as gifts in 2016, including Sal Lauro, who then headed law enforcement for the BLM.

The OIG report also concluded Love obstructed an investigation into an employment-related matter by instructing a subordinate “scrub” his emails where he used inappropriate or demeaning language. Last year, Love also ordered a subordinate to identify sensitive material sought by then-Rep. Jason Chaffetz, R-Utah, as part of an official inquiry.

“The subordinate told us he felt morally wrong about deleting the emails, but he did not discuss his feelings with [Love],” the report states. “He also said the senior manager was very intimidating, manipulative, and controlling, and he did not believe he could report the matter to Lauro or other [law enforcement] officials because [Love] was ‘very, very close’ to them.”

The OIG presented its finding to the Utah’s U.S. Attorney’s Office, which declined to prosecute. The report has been submitted to senior Interior officials for further action. A BLM spokesman did not return a phone message.

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#### 9. Report: BLM agent handed out confiscated Moqui marbles 'like candy'

*The Deseret News, Aug. 24 | Amy Joi O'Donoghue*

SALT LAKE CITY — In June 2009, the Bureau of Land Management's Dan Love led Operation Cerberus, a raid involving the nation's largest Native American artifacts trafficking case, resulting in 25 arrests.

Twelve teams of federal agents, including a SWAT team, carried out operations on 12 properties in the Four Corners region and around the communities of Moab, Monticello and Blanding.



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Flash forward eight years to Thursday when the Interior Department's Office of Inspector General released a report that substantiated allegations that Love ordered a subordinate to remove Moqui marbles from his agency's evidence room — marbles that were part of a criminal investigation after being illegally removed from a national park five years earlier.

Some ancient cultures believe Moqui marbles have mystical and healing qualities. They contain a sandstone center encased in an iron oxide shell and are found in many of Utah's national parks, including Zion. They are named after the Moqui Indians and used by some tribes to communicate with their ancestors.

The report on Love's handling of the criminal evidence goes on to detail that more than 80 five-gallon buckets contained thousands of the marbles — with a retail value of up to \$520,000 — that were stored in an evidence room in Salt Lake City. During the inventory, according to the report, Love told three employees they could take one to display on their desks.

During the counting, Love also told the employee to remove three or four of the "best" marbles from evidence to give to him, the report says.

"The subordinate told us he 'had a bad feeling' about removing the marbles from evidence, but did not question the instructions because the senior manager was a law enforcement official and was 'scary.' The subordinate knew at the time the marbles were evidence in an ongoing criminal prosecution," according to the report.

The marbles were distributed among co-workers and a contractor over a period of a couple of years before the Inspector General's Office initiated an investigation in November of 2016 based on a number of alleged violations.

The case involving Love and the Moqui marbles is strangely juxtaposed with the Native American artifacts raid eight years ago that some critics called overkill and the federal government insisted was justice.

No one served prison time, and three people central to the case — a pair of defendants and a confidential informant — killed themselves in the aftermath.

Locals complained that a simple property crimes case treated ordinary citizens as hardened criminals in an overblown raid, but a civil complaint alleging excessive force was dismissed



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earlier this year by the courts. Looting is a federal crime, as well as the selling or trafficking in Native American antiquities.

On Wednesday, Rep. Rob Bishop, R-Utah, requested an unredacted version of an earlier investigation by the Inspector General's Office that probed Love and ethics complaints.

With this new report finding that Love — as special agent in charge of Nevada and Utah — violated evidence policy, Bishop is now wanting answers from the Department of Interior.

"After numerous reports substantiating serious allegations of misconduct, including the destruction of federal records, defiance of congressional document requests and misuse of ancient artifacts under investigation as office decor, I expect Interior to hold Dan Love accountable. The people of Utah and Nevada — and the American taxpayers — deserve better," Bishop said.

The most recent investigation detailed that Love ordered a subordinate to "scrub" emails he sent that would cast him in an unfavorable light. Another allegation that documents had been destroyed in the height of a congressional inquiry could not be substantiated.

Two laptops assigned to Love were lost earlier this year, the report says, and notes a trio of employees told investigators that Love repeatedly said the computers he used would disappear or become broken if he or his job were targeted.

"I look forward to seeing how this administration responds to the unethical behavior uncovered by the report," Bishop said. "We must take steps to restore trust in federal law enforcement officers and hold employees accountable for their mismanagement of our taxpayer resources."

The U.S. Attorney's Office declined to prosecute the case, but the report has been turned over to the acting assistant secretary for Lands and Mineral Management for appropriate action.

Love has declined to respond to requests for comment.

In an earlier ethics probe of Love released earlier this year, the inspector general substantiated that breaches had occurred, noting he used his position to secure preferential treatment for him and his family at the 2015 Burning Man event in Nevada.



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Love has long been at the center of multiple complaints by rural Utah sheriff's offices, alleging that while at the helm of law enforcement agents for the BLM, the agent was dismissive and uncooperative.

A contingent of rural county commissioners and sheriff's officials traveled to Washington, D.C., to complain of the souring relationships and ask for the agent's removal.

Love also oversaw the federal law enforcement response regarding the armed standoff on the Utah-Nevada border with the Cliven Bundy family over unpaid grazing fees.

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#### E&E/NATIONAL NEWS – TOP STORIES

##### **1. Interior Department calls for changes to national monuments but offers no details. Here's how we got here**

*PBS NewsHour, Aug. 24 | Nsikan Akpan*

Interior secretary Ryan Zinke called Thursday for a “handful” of changes to 27 national monuments that have been under review since this spring.

The 120-day review, set in motion by an executive order from President Donald Trump, was due to end today with a “final” report of recommendations for national monument designations. Zinke delivered that report to the White House, but a White House official told NewsHour that today’s report is a draft; when the final report is done “in coming weeks,” it will be released, the official said.

Zinke told the Associated Press that while his assessment stops short of eliminating any monuments, it does alter the boundaries for some of these wilderness areas. The interior department has provided no public details on the size or location of these boundary changes, though Zinke told the AP he felt some monuments are too large.

Here's how we got here.

Some background: Zinke’s review began in late April, after an executive order directed the interior department to review 22 federally-owned lands protected by the Antiquities Act of 1906. Two days later, a second order — called “Implementing An America-First Offshore Energy



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Strategy” — expanded the review to marine monuments, including the largest contiguous fully protected conservation area under U.S. jurisdiction, the Papahānaumokuākea Marine National Monument. All 27 monuments were either established or expanded by Presidents Bill Clinton, George W. Bush or Barack Obama.

The interior opened up the review to the public, collecting more than 2.4 million comments from “relevant stakeholders.” An Interior Department summary of the report, which the White House says is still a draft, stated “comments received were overwhelmingly in favor of maintaining existing monuments,” though opinions on the issue remain split.

#### **Why has this been controversial?**

For ranchers and people in the West who use public lands, the concept of an Antiquities Act designation just hits them the wrong way, Ethan Lane, executive director of the Public Land Council, told NewsHour. He described the concept of the review was “breath of fresh air” that allowed ranchers to contribute to designation of public lands.

But Land Tawney, president and CEO of Backcountry Hunters and Anglers, described any kind of reduction of national monument as an attack on all. (Zinke told AP public access to hunting, fishing or grazing would remain intact or be restored).

Prior to today’s report, Zinke removed six of the 27 national monuments — one each in Montana, Colorado, Idaho, California, Arizona and Washington — from the initial list, stating those areas were no longer being reviewed.

#### **Has this happened before?**

While there is no official restriction on the size of national monuments, presidents have only shifted their boundaries about dozen times — and none since John F. Kennedy, according to The Atlantic:

Since that time, too, Congress passed the Federal Land Management and Policy Act in 1976, which remade public land law and reserved more power over national monuments for Congress.

Yet there is a history of presidents tinkering around the edges of national monuments—and sometimes cutting into them wholesale. Mount Olympus National Monument on Washington’s Olympic Peninsula provides a good example of this. The monument, encompassing temperate



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rainforest and Pacific seashore, was first created by President Theodore Roosevelt in 1909. In the next two decades, it received two small, largely uncontroversial cuts, as the original designation had accidentally included some private homesteads.

#### **One monument in the crosshairs**

Zinke had already called on Trump to revise the boundaries of the Bears Ears National Monument, an area designated by President Barack Obama as one of his last acts in office. This 1.35 million-acre swath in southeastern Utah is filled with dinosaur fossils, red rock canyons, mesas and archaeological sites of significance to Native Americans. While Zinke declined to comment on future fossil fuel speculation for the 27 monuments under review, such plans had been floated for Bears Ears in the recent past.

In July 2016, Rep. Rob Bishop, R-Utah, and former Rep. Jason Chaffetz, R-Utah, introduced the Utah Public Lands Initiative, which included a proposal for fossil fuel development in what is now Bears Ears.

Kathleen Sgamma, president of the Western Energy Alliance, told NewsHour that the oil and natural gas industry has not been greatly affected by monument designations so far. She said leases in contentious places — like Bears Ears and Missouri Breaks — were abandoned long ago by oil companies.

#### **What's next?**

It's a game of wait and see, until The White House releases a final report. It's not clear when that will be.

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#### **2. The Conservation Alliance Responds to Interior Secretary Ryan Zinke's National Monument Review Summary Report**

*The Conservation Alliance, Aug. 24 | Press Release*

Interior Secretary Ryan Zinke today submitted a report to President Trump in which he reportedly recommends that the President alter the boundaries of some National Monuments designated since January 1996. The Interior Department did not release the full report, and



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provided no specifics about which monuments would be impacted, but Secretary Zinke told the Associated Press that the recommended changes would reduce the size of a “handful” of the protected areas. Zinke also told the AP that the report does not recommend rescinding any National Monument designations entirely.

“Secretary Zinke has been telegraphing for months that he would recommend shrinking some National Monuments,” said John Sterling, Executive Director of The Conservation Alliance. “If President Trump acts on those recommendations, it would be an unprecedented assault on the crown jewels of our public lands system. We stand ready to defend our National Monuments.”

“The Conservation Alliance opposes any effort to change the boundaries of existing National Monuments through executive action,” said Sterling. “The monuments under review are icons of our American landscape. They provide unique opportunities for adventure and solitude, and many have traditional value to Native American communities. National Monuments also drive local economies that benefit from related tourism and outdoor recreation.”

The White House confirmed that they received Zinke’s report, and is reviewing it. It is not clear when the White House or Interior will release the full report to the public. Secretary Zinke did release a short summary of the report that included few details, but did acknowledge that public comments during the National Monument review “were overwhelmingly in favor of maintaining existing monuments.”

President Trump is likely to pursue two options for acting on the recommendations. First, he could issue an executive order changing the boundaries of one or more of the monuments under review. It is unclear whether such changes are legal, and any attempt to reduce National Monument boundaries by executive action will immediately be challenged in court.

Second, the President could issue a formal recommendation to Congress that they pass legislation to change certain National Monument boundaries. Legislation undermining existing National Monument protections would trigger a fierce battle in Congress. Nearly three million Americans submitted comments opposing any changes to the National Monuments under review, and it is certain those people will pressure their members of Congress to oppose any such legislation.

The Conservation Alliance will work closely with our member companies and our partners in the conservation community to respond to any attempt to diminish our National Monuments.



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“We are prepared to use our grant program to fund litigation challenging boundary changes made by executive action,” said Sterling. “We will support grassroots conservation groups that work to organize opposition to legislative efforts to shrink monuments. And we will continue to organize our member companies and their employees and customers to speak out forcefully in support of our public lands.”

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### 3. Smart Move to Repeal Department of Interior 'Valuation Rule' on Minerals

*Competitive Enterprise Institute, Aug. 24 | Marlo Lewis, Jr.*

On August 7, the Department of Interior’s Office of Natural Resources Revenue (ONRR) repealed the Obama administration’s minerals Valuation Rule. The Obama rule revised longstanding regulations governing how leaseholders on federal and Indian lands are to value the coal, oil, or gas they produce for the purpose of calculating royalty payments.

In an August 9 U.S. News & World Report column entitled “Royalty Screwed,” Ryan Alexander of Taxpayers for Common Sense describes the Trump ONRR’s action as a “boon to industry at the expense of taxpayers.”

According to Ms. Alexander, one of the Valuation Rule’s “main objectives was to stop the common practice of manipulating product valuations” to reduce royalty payments and increase profits. “Specifically,” she contends, “coal companies were able to sell their product to an affiliate at a small markup, and calculate the royalty payment due based on that low valuation. The affiliated buyer who had purchased the coal at a very low rate was then able to resell it at a much larger profit margin.”

Actually, neither the proposed nor final valuation rule claims the point is to stop longstanding abuse of the sort described. Nonetheless, a long literature—much of it by green advocacy scholars, including members of President Obama’s Council of Economic Advisors—claims that coal leasing on federal lands rips off taxpayers (see, e.g., [here](#), [here](#), [here](#), [here](#), and [here](#)). I won’t attempt to assess that literature here, though there are reasons to be skeptical (see this detailed rebuttal by the National Mining Association and Northwest Corporation).



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My gripe with “Royalty Screwed” is that it never mentions the ONRR’s stated reasons for repealing the Valuation Rule, leaving the impression that the agency has no public-interest rationale, only a coal-fueled political agenda.

Here’s the other side of the story. In the Repeal Rule, the ONRR claims the Valuation Rule “has a number of defects that make certain provisions challenging to comply with, implement, or enforce.” Indeed, the agency contends, “Absent their repeal, the rule would compromise ONRR’s mission to collect and account for mineral royalty revenues; could affect royalty distributions to ONRR’s State and Tribal partners; and would impose a costly and unnecessary burden on Federal and Indian lessees” (82 FR 36934).

Chief among the cited defects is the directive to value coal based on electricity sales. The Valuation Rule continues DOI’s longstanding policy of encouraging lessees to determine fair market value based on the first sale to a non-affiliated company. That is the gold standard but it is not applicable in all situations. For coal lessees, the first arm’s-length sale is often the sale of electricity by an affiliated utility. Prior to the Valuation Rule, lessees supplying coal to an affiliated utility were to estimate fair market value based on “benchmarks” derived from arm’s-length coal contracts in arguably comparable markets.

Desiring to replace such guesswork with more exact estimates, the Valuation Rule eliminates the use of benchmarks and directs lessees to derive the value of their coal from electricity sales prices (81 FR 43355). That is unworkable, the Trump ONRR argues, because “the sale price of electricity is determined by many factors.” In addition to the cost of coal, the price of electricity also “reflects the company’s costs to construct, operate, and maintain its depreciable capital assets; its costs to operate and maintain other necessary infrastructure; its costs to comply with applicable Federal and State laws; and its corporate overhead and other internal corporate costs.”

Moreover, electricity is transmitted and distributed “through regional grids,” which pool “electricity generated from a variety of different resources, including natural gas, solar, wind, geothermal, and coal.” Consequently, “it would be very challenging for lessees to calculate and pay royalties based on the sale price of electricity and similarly challenging for ONRR to verify the accuracy of those calculations” (82 FR 36936).



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That requirement plus other “defects . . . undermined the purpose and intent of the [valuation] rule and would have created confusion and inefficiencies and imposed additional burdens on both ONRR and the regulated community,” according to the agency (82 FR 36938).

Instead of repeal, Ms. Alexander suggests the ONRR should have retained the Valuation Rule and fixed its flaws with input from Interior Secretary Ryan Zinke’s recently chartered Royalty Policy Committee (RPC). But that could disrupt coal leasing and sales for months or years if, as the ONRR argues, valuation based on electricity prices is unworkable. In the agency’s judgment, “The cost of implementing the rule and subsequently trying to fix the defects in one or more separate rulemakings would far exceed the cost of repealing and replacing the rule” (82 FR 36940).

The Repeal Rule reinstates the valuation regulations that had been in place before the Valuation Rule took effect on Jan. 1, 2017, ensuring that coal leasing and sales can continue while the agency develops and adopts a new rule informed by public comment and recommendations from the RPC.

Another advantage of repeal is that it avoids useless litigation. In December 2016, “three different sets of petitioners filed three separate petitions challenging the 2017 Valuation Rule in the United States District Court of Wyoming” (82 FR 16323). What is the point of defending a rule you regard as fatally flawed?

Thus, according to the ONRR, repeal has the following benefits: “It would (a) preserve the regulatory status quo while ONRR reconsiders whether revisions are appropriate or needed to the pre-existing regulations governing royalty values; (b) avoid costs to both government and industry of converting to controversial new royalty reporting and payment systems while the reconsideration is taking place; (c) eliminate the need for continued and uncertain litigation over the validity of the 2017 Valuation Rule; and (d) enhance lessees’ ability to timely and accurately report and pay royalties, because they would continue to use a well-known system that has been in place for decades” (82 FR 16323).

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#### **4. Bipartisan House Amendment Would Restore Wild Horse Protections**

*Yuba.net, Aug. 25| Press Release*

Aug. 25, 2017 – Reps. Dina Titus, D-Nevada, Peter King, R-New York, and Jared Polis, D-Colorado, on Thursday filed an amendment to the Interior Appropriations bill that would restore protections for wild horses and burros. It comes in response to the July 19 passage, by House Appropriations Committee voice vote, of an amendment by Rep. Chris Stewart, R-Utah, which would allow the Bureau of Land Management to kill healthy unadopted wild horses and burros.

On behalf of supporters nationwide, Return to Freedom Wild Horse Conservation praised the representatives for hearing the voices of the American people, 80 percent of whom have consistently opposed horse slaughter in polls and a similar percentage who say they want to see wild horses protected.

We are grateful for the leadership of Reps. Titus, King and Polis and are hopeful that other members of the House will join them in rejecting a plan to wipe away years of mismanagement by using taxpayer dollars to shoot tens of thousands of horses,? said Return to Freedom president Neda DeMayo.

House members should vote for the Titus-King-Polis amendment as a step away from a cruel, costly system of capturing, removing and warehousing wild horses and burros — and a step toward creating a new, proud plan to restore balance to our public rangelands using proven, humane tools that will provide wild horses with a sustainable future while saving taxpayers millions of dollars over time.?

In addition, Reps. Vern Buchanan, R-Florida, Lucille Roybal-Allard, D-California, Ed Royce, R-California, and Earl Blumenauer, D-Oregon, on Thursday filed a bipartisan amendment to the Agriculture Appropriations bill that would bar the U.S. Department of Agriculture from funding horsemeat inspectors.

On July 13, the House Appropriations Committee voted 27-25 to reject a similar amendment, a vote that could open the door to horse slaughter plants opening in the United States for the first time since 2007. Because there is no permanent federal ban on horse slaughter, advocates push annually for an amendment barring the USDA from hiring horsemeat plant inspectors to effectively keep a ban in place.



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#### **5. COAL: DOE report blames natural gas for closures**

*The National Review, Aug. 25 | Philip H. DeVoe*

When Ferdinand V. Hayden returned from his exploration of the area that is now Yellowstone National Park, he warned President Ulysses S. Grant that “vandals who are . . . waiting to enter into this wonder-land, will in a single season despoil . . . these remarkable curiosities, which have required all the cunning skill of nature thousands of years to prepare.” His words led to the beginning of the National Park system, and to the creation, 101 years ago today, of the National Park Service (NPS).

Today, Americans enjoy access to 59 National Parks. We can be grateful that the number has been kept small, with the title of “National Park” reserved for those sites that are almost literally breathtaking. They inspire in their visitors a sense of otherworldliness, humility, and spiritual majesty (the Mormons who explored what is now Zion National Park immortalized their feeling of God’s presence in spiritually inspired names for the park’s monuments, including Angels Landing and the Great White Throne).

But the Parks make up just 11 percent of the total lands protected by the federal government. While both conservatives and liberals appreciate the National Parks, the far vaster system of federally protected land worries conservatives. The issue is a complicated one for us, especially when one considers that the importance of stewardship is what inspired the NPS and the federal protection of land in the first place. We take seriously our God-given responsibility to protect and care for the Earth. Despite Theodore Roosevelt’s progressive roots, his legacy as a pro-conservationist president can trace its origins to this notion. And it continues to inspire today; it’s why Russell Kirk found something to like about Wendell Berry, a noted conservationist and self-identified Democrat. In a 2012 article for National Review, John J. Miller explored Berry’s conservative conservationism, observing that Berry possesses a “suspicion of progress, support for local autonomy, and a preference for the old ways of doing things.”

Berry’s self-sufficient homestead in Kentucky represents part of the conservative approach to stewardship. Another part is the recognition that, sometimes, government has a responsibility to be stewards for us. If all men were angels, after all, no government would be necessary.



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But it gets complicated when we look at the current state of federal land protection. (Even the left-wing Berry is uncomfortable with government overregulation.) Like most well-intentioned government ideas, federal land protection has grown out of control, and forgotten its conservative roots.

For one thing, America has a federal system, and the use of state lands should be left up to the states. Frustrated with the federal government's overreach, Congress placed two limitations on the Antiquities Act — the law allowing the president to set aside state-owned land as a National Monument. In 1943, after Franklin Roosevelt declared Jackson Hole National Monument federally protected, Wyoming congressmen persuaded their colleagues to limit the act to require congressional ratification for future enlargement or creation of national monuments in Wyoming. In 1978, after Jimmy Carter declared 56 million acres of Alaska federally protected, Congress expanded the Wyoming rule to include Alaska, with the ratification requirement covering areas of 5,000 acres and above.

Nevada is perhaps the most striking example of federal over-protection of lands. While 48.4 and 61.3 percent of Wyoming's and Alaska's land, respectively, is owned by the federal government, the people of Nevada control less than 25 percent of their own land, according to data from a March report by the Congressional Research Service. The state with lowest percentage of federally owned lands is Washington, at 28.6. The highest percent in the Plains states, whose people use their land for farming and raising livestock, is South Dakota, at 5.4 percent. In all states east of the Mississippi River, the government owns only 4 percent of the land.

Federal land ownership decreased by 3.9 percent between 1990 and 2015. The Bureau of Land Management, which regulates activities such as grazing and mining on public land, saw the highest acreage loss, at 23.6 million acres. But over the same period, the land holdings of the NPS, the Fish and Wildlife Service, and the Forest Service increased by about 7.4 million acres. In fact, much of the BLM's land loss over that 25-year period represents a transfer of land to other federal departments. The 1994 California Desert Protection Act alone reassigned 2.9 million acres of BLM land to the NPS.

So even as overall federal land ownership got smaller, the land protected by the NPS has increased. And, despite what those in favor of federal land ownership will tell you, it is relatively easy for the government to set aside protected land. Consider for a moment the current list of categories into which annexed land falls:



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National Parks; National Preserves; National Seashores; National Lakeshores; National Forests; National Grasslands; National Monuments; National Battlefields; National Memorials; National Historic Sites; National Parkways; National Cemeteries; National Conservation Areas; Wilderness Areas; Wilderness Study Areas; National Wild and Scenic Rivers; National Scenic Trails; National Historic Trails; Outstanding National Areas; National Marine Sanctuaries; National Recreation Areas; National Estuarine Research Reserves; National Wildlife Refuges.

Without some clear definition of what genuinely requires protection, it's easy for the federal government to declare land "protected" under one of this long list of categories when such a need for protection doesn't exist, when the land is just, well, land. While much of the protected government land could be used for public economic benefit, conservatives do recognize that, because of the "tragedy of the commons," there would be bad consequences if such a reform were implemented improperly or all at once.

On the 101st anniversary of the NPS, we must toast a noble division of the federal government, but continue fighting government over-protection of state lands. We need to save a program conservative in its conception but toxically liberal in its present form. The government itself has become the avaricious vandals the NPS was created to resist, and our conservative heritage, our federalist history, and our representative democracy are on the line.

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#### **6. NATIONAL MONUMENTS: Courts backed presidents in past Antiquities Act disputes**

*E & E News, Aug. 25 | Jennifer Yachnin*

Opponents of Interior Secretary Ryan Zinke's review of national monuments are vowing to challenge the Trump administration in court if it attempts to roll back the boundaries of any site — setting up a legal fight over limits of the Antiquities Act of 1906.

The White House is considering a secret draft report — Zinke said yesterday that a "handful" of the 27 monuments he reviewed will be targeted for cuts, without offering specifics on the actual acreage or sites — but gave no indication on when or whether President Trump would act on his recommendations (Greenwire, Aug. 24).



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In addition to a proposal Zinke floated earlier this year for shrinking the Bears Ears National Monument in southeastern Utah, The Washington Post reported yesterday that other cuts could be made at the Grand Staircase-Escalante National Monument in southwestern Utah and the Cascade-Siskiyou National Monument in Oregon and California.

Matt Lee-Ashley, the Center for American Progress' senior director of environmental strategy and communications, also asserted yesterday that the cuts would total "half or more of the total area" under review, without citing specific sources.

"What exactly constitutes the handful of changes that Secretary Zinke described?" Lee-Ashley said in a news conference. "I very much doubt that he's talking about a few little boundary changes here and there. Why on earth go to all this trouble or keep your recommendations secret if you're just going to tinker around the edges?"

He added that sites likely to be reduced include the Utah monuments as well as New Mexico's Organ Mountains-Desert Peaks and Rio Grande del Norte, Nevada's Basin and Range and Gold Butte, California's Mojave Trails and Castle Mountains, and the Northeast Canyons and Seamounts off Massachusetts' coast.

The Interior Department has rejected requests for comments on the report, referring inquiries to the White House press office.

Despite the fact that both Interior and the White House have referred to the report as a "draft" — and pointed to its status as the reasons it has not been made public — a White House official insisted that "no deadlines got pushed back."

In the executive order Trump issued in late April mandating the review of all monuments established since 1996 comprising more than 100,000 acres, the president set a 120-day deadline for a "final report" with recommendations for "presidential actions, legislative proposals or other actions consistent with law."

"We just decided that there are additional questions and issues that need to be answered and explored in greater detail," the White House official told E&E News, speaking on the condition of anonymity. The source declined to confirm reports of those monuments targeted for reductions.



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The official added, "We want time to study the recommendations before releasing. We want to get this right."

#### **Remember the Devils Hole pupfish?**

But opponents of the monuments review — and any potential changes to existing sites — argue that only Congress has the authority to alter existing monuments.

That dispute is likely to set up a legal battle over the president's authority under the Antiquities Act, which allows the White House to designate monuments on federal lands with historic, scientific or cultural significance.

Although past presidents have adjusted the boundaries of monuments created by their predecessors, none has done so since President Kennedy altered the acreage of the Bandalier National Monument in New Mexico in 1963.

In the decades that followed, Congress created the Federal Land Policy and Management Act in 1976, and legal scholars assert that law has closed a loophole allowing such changes to be made by the chief executive.

Former Interior Deputy Solicitor for Land Resources Justin Pidot, who is now an associate professor at the University of Denver Sturm College of Law, notes that while the Antiquities Act has faced repeated legal scrutiny, the specific question of reductions or boundary changes has not.

"What authority does the president have to modify or diminish a monument has never been tested in court," Pidot said.

He noted that the prior reductions on federal lands were often done to correct mapping errors or issues with the administration of a monument.

"We're talking about monuments created between 1906 and 1939, a long time ago, using a lot less technology than we have now," Pidot said.

Nonetheless, conservationists and legal scholars say case law on the Antiquities Act itself suggests any challenges to existing monuments could face an uphill battle.



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Pidot noted that federal courts have repeatedly affirmed the "very broad authority on the part of the president to identify a monument."

Although Congress may have intended the Antiquities Act to guard against "pot-hunters" or museums and researchers who were looting archaeological sites in the early 1900s, President Theodore Roosevelt opted to take a more expansive view of the law when he began designating the nation's first monuments (Greenwire, Aug. 11).

The Supreme Court confirmed Roosevelt's actions more than a decade later when it ruled in 1920 against an Arizona businessman and miner who asserted that the president had no authority to set aside the then-808,000-acre Grand Canyon National Monument.

"The defendants insist that the monument reserve should be disregarded on the ground that there was no authority for its creation. To this we cannot assent," Justice Willis Van Devanter wrote in *Cameron v. United States*.

He added, "The act under which the President proceeded empowered him to establish reserves embracing 'objects of historic or scientific interest.' The Grand Canyon, as stated in his proclamation, 'is an object of unusual scientific interest.'"

Decades later, the Supreme Court would once again defend the president's ability to designate more antiquities for protection, in the 1976 ruling in *Cappaert v. United States*.

The court dismissed arguments that President Hoover should not have been able to designate Devils Hole, a unit of what is now Death Valley National Park, under the Antiquities Act.

"Under that Act, according to the Cappaert petitioners, the President may reserve federal lands only to protect archeologic sites," Chief Justice Warren Burger wrote in the unanimous opinion. "However, the language of the Act, which authorizes the President to proclaim as national monuments 'historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government,' is not so limited."

He added of the endangered Devils Hole pupfish: "The pool in Devil's Hole and its rare inhabitants are 'objects of historic or scientific interest'" (Greenwire, June 9, 2014)



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More recently, opponents of national monuments have challenged a host of designations made by President Clinton in his final days in office, including the Grand Staircase-Escalante monument.

"In both cases, they lost handily and the court found that the president had acted well within his authority to create those monuments," Pidot said.

In a 2004 ruling upholding Clinton's creation of the Utah monument, Utah District Judge Dee Benson said his court did not have the authority to review the use of the Antiquities Act.

"When the president is given such a broad grant of discretion as in the Antiquities Act, the courts have no authority to determine whether the president abused his discretion," Benson wrote at the time (Land Letter, April 22, 2004).

That case was filed by both the Mountain States Legal Foundation and the Utah Association of Counties.

Mountain States Legal Foundation and the BlueRibbon Coalition, an off-road vehicle users group, also lost a 2002 challenge against Clinton's monument designations in Washington, Oregon, Colorado and Arizona.

The U.S. Court of Appeals in Washington, D.C., turned back arguments that Clinton had exceeded his authority in designating those monuments.

"Nothing in the record before us indicates any infirmity in the challenged proclamations," the court decision stated. "Each proclamation identifies particular objects or sites of historic or scientific interest and recites grounds for the designation that comport with the Act's policies and requirements" (Greenwire, Oct. 21, 2002).

Challenges are pending in federal court against two monuments created by President Obama, the Northeast Canyons and Seamounts monument and the Cascade-Siskiyou monument, but have been stayed pending the Trump administration's review (E&E News PM, May 12).

"We believe that there's no presidential authority to change a prior president's monument designations, either size or the other findings," the National Parks Conservation Association's



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vice president of general counsel, Libby Fayad, told E&E News. "We believe that we have constructed a good legal argument for that, and we expect to prevail."

#### **Lawmakers, groups want report**

In the meantime, members of Congress and outside groups are pushing the Trump administration to unveil the details of the report.

The Center for Biological Diversity filed a Freedom of Information Act request yesterday to force the disclosure of Zinke's recommendations.

"This entire review has been a lawless, secretive sham," CBD's public lands director, Randi Spivak, said in a statement. "Now Trump and Zinke are hiding the report so they don't have to face public backlash for trying to sell out America's public lands to fossil fuel development and logging. They're asking for a court battle. And they'll get one."

While some members of Congress, including Utah Sen. Orrin Hatch (R), have indicated they were briefed by Interior on the report, others, including Oregon Sens. Ron Wyden (D) and Jeff Merkley (D), as well as Oregon Gov. Kate Brown (D), said they had received no information.

A Hatch spokesman declined to provide details of the briefing, referring questions to Interior. "We want to respect that it's theirs to share," he said.

Nevada Rep. Dina Titus (D) announced yesterday that she will seek an amendment to the Interior appropriations bill to block the administration from making changes to national monuments.

"Whatever this secret report says, I am committed to defending these important places from the attacks of the Trump administration," she said.

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#### **7. OBITUARY: Former Interior Secretary Cecil Andrus dies at 85**

*E & E News, Aug. 25 | AP/Los Angeles Times*

Former Interior Secretary Cecil Andrus, who helped conserve millions of acres of Alaskan land under the Carter administration, has died at age 85.



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Andrus resigned from his second term as Idaho governor in 1977 to serve as secretary of the Interior until Carter's term ended in 1981.

He then served as Idaho's governor two more times, setting a record as Idaho's first four-term governor. He was the last Democrat to hold the office.

Andrus once said that being Idaho's governor was "the best political job in the world."

In 1978, he announced permanent national monuments on over 50 million acres in Alaska.

That same year, he ordered an additional 52 million Alaskan acres to be protected despite criticism from residents. A popular bumper sticker at the time read, "Lock up Andrus, not Alaska."

Andrus died Wednesday night of complications due to lung cancer, according to his daughter (AP/Los Angeles Times, Aug. 25). — CS

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#### **8. OIL AND GAS: What's driving high break-even prices on public lands?**

*E & E News, Aug. 25 | Pamela King*

Oil and gas producers might have a harder time breaking even in shale plays containing federally controlled land, but that may have little to do with the regulatory and permitting burdens associated with extracting hydrocarbons from public acreage, energy researchers say.

In the oil and gas sphere, a break-even price refers to the sum of money an operator must collect in order to recoup production costs. The calculation — a critical consideration in nearly any business transaction — helps extraction firms decide whether to sink a well in the first place.

Generally speaking, break-even prices should be lower than the price of a barrel of oil in order to spur industry interest.

"For the most part, Lower 48 production comes from private fee lands. On public lands, activity has not been as high," said Clay Lightfoot, upstream research manager at Wood Mackenzie.

"You could argue that's because of the federal permitting process, but I don't think that's really the case."



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The Permian Basin is an interesting case study, he said. With the price of a barrel of West Texas Intermediate crude sitting at \$47.59 yesterday, Texas's share of the Permian resource is currently one of the few places the shale industry can comfortably produce.

Across the New Mexico border, break-even prices are about \$25 per barrel higher, according to data collected and compiled by Rystad Energy.

Because the Permian's lobes are spread across two states with dramatically different land ownership — public lands in New Mexico versus private tracts in Texas — it's easy to conclude that additional federal requirements on production in the Land of Enchantment may have dampened the possibility of a boom on the magnitude of what Texas has experienced, Lightfoot said.

Anecdotally, that has been the experience of members of the Western Energy Alliance, said Kathleen Sgamma, president of the trade group.

"The fact that public lands take years longer to develop than adjacent private and state lands means that they're inherently more expensive to operate on," she said. "Tying up capital for a long time reduces return, and then there's the additional cost of regulatory red tape."

But there are trade-offs to setting up shop on public lands, Lightfoot said.

"On the flip side, you see that the royalty rate is a bit lighter on the New Mexico side," he said. "We've seen more operators go there recently."

The federal government charges a 12.5 percent royalty rate for oil and gas produced on its onshore properties. Although private royalty data are fuzzy due to proprietary restrictions on contracts, Texas has been known to charge as much as 25 percent.

Balancing a lower federal royalty rate with the burden of complying with an extra layer of federal regulations "becomes an individual company strategy," Lightfoot said.

In fact, many energy data services do not compile break-even prices across entire formations because the economics can vary greatly from operator to operator.



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"Each company has its own 'break-evens' based on the costs of entry, etc., so it is more of a company-by-company conversion," IHS Markit spokeswoman Melissa Manning wrote in an email.

Consultancies like Rystad and Drillinginfo Inc. do calculate break-evens by region, but experts who track those numbers were skeptical that public lands policies had much to do with driving up production costs on federal acreage.

Compliance with federal requirements has "very limited impact on break-even prices," Espen Erlingsen, a partner at Rystad, wrote in an email. "It is a combination of well productivity and the costs for new wells that causes the break-even price for these regions to be higher than the average."

A tougher regulatory environment in and of itself is unlikely to deter operators from doing business in regions with higher break-evens, he added.

"We think it is the well performance that makes these areas less attractive compared to other shale plays," Erlingsen said.

#### **Drilling in the Rockies**

Across the board, Rystad expects average break-even prices to increase by up to 7 percent this year.

"The reason why we expect to see a higher wellhead break-even price this year is a combination of various factors, especially increased costs from the oil field service companies, as well as so-called 'reversed high-grading,' a situation where companies are no longer running only the best rigs in their best acreage," said Sona Mlada, a senior analyst at Rystad.

Parcels in the Piceance Basin may not be among the most appealing places for energy firms to conduct business, said Jason Slingsby, an analyst for the energy advisory BTU Analytics. The western Colorado play abuts the Greater Green River Basin, where break-even prices recently hovered around \$92.71 — among the highest calculated by Rystad.

Geology is a huge factor in determining break-even prices, and the Rocky Mountains — which cut through public lands in Wyoming, Colorado and other states — shape a historically difficult terrain, he said.



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The Piceance is currently populated by smaller private firms that have acquired assets from large public companies, Slingsby said. Because smaller companies tend to run less efficiently, that can lead to higher break-even prices in the plays where they operate.

One upside of hosting private or pure-play operators is that those firms tend to stay faithful to their sweet spots — even if the economics aren't ideal, Slingsby said. Larger, diversified firms have better options elsewhere, he said.

"If I'm a big operator with strong assets in Texas's Delaware Basin, I might need to focus on those and sell off some of my underperforming assets," he said.

That assessment rings true for the Western Energy Alliance membership, Sgamma said.

"I have many members that avoid public lands at all costs," she said. "There are companies that are dedicated to a play — they might have assets only in the Piceance, so they remain committed."

"But in general, companies and investors are avoiding public lands if they can go somewhere else."

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#### 9. **DOE: Can coal and nuclear save the grid?**

*E & E News, Aug. 25 | Peter Behr*

"Fuel security" has jumped to the top of the hazards list confronting the U.S. electric power grid, elevated most recently in the Energy Department staff report to Secretary Rick Perry on electricity markets and reliability.

A primary question asked but not answered in the report is: Are coal and nuclear power plants, with their on-site fuel supplies, essential for a swift recovery from a grid disaster or major disruption?

The question is also central to the Trump administration's political agenda of helping out the coal industry.



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In theory, coal could get a federal boost if government regulators changed power market rules to give coal plant operators extra payments as a reward for coal piles with 70 or more days of supply right at hand. A similar "fix" could be applied to at-risk nuclear plants, as the state of New York did with subsidies for financially distressed nuclear reactors.

The DOE report released Wednesday makes a pitch for helping the coal industry, asserting that the economic and regulatory challenges to coal have compromised the grid's capacity to respond to an electricity disruption. "Hydropower, nuclear, coal and natural gas power plants provide essential reliability services and fuel assurance critical to system resilience," the summary statement said. Not on the list: renewables.

During the bitter polar vortex cold spell in 2014, Ohio-based American Electric Power Co. called on nearly 90 percent of its coal units that were scheduled for retirement to meet an emergency shortage of power after gas infrastructure froze.

"Using these retiring units enabled utilities to meet customer demand during a period when already limited natural gas resources were diverted from electricity production to meet residential heating needs," DOE staff wrote. "Once retired, however, these units will not be available for the next unseasonably cold winter."

But the staff goes on to say that all fuel sources for conventional generation face risks of different kinds and severity, citing the shutdown of California's huge Aliso Canyon natural gas storage facility.

Also mentioned was Superstorm Sandy in 2012, which delivered an "all of the above" blow to electricity producers. Transmission lines and substations were lost. Three nuclear reactors were shut down. Gas pipeline compression stations in New Jersey were knocked out. And Sandy caused \$3 million in damage to ground-mounted solar power systems.

The report did not point to potential disasters of a far greater scale, such as a major earthquake along the New Madrid fault running through the Mississippi River valley, which last happened in 1811.

According to the government's National Level Exercise in 2011, a 7.7-level quake now would kill 100,000 Midwesterners, force 7 million people from their homes, and instantly shut down approximately 750 transmission lines and 300 substations, leaving half of the latter extensively



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damaged in Arkansas and Tennessee. The earthquake would also cause breakages in 10 interstate natural gas pipes and damage oil pipelines and rail lines that carry coal. The loss of electricity could put nuclear plants in a Fukushima emergency with outside power gone — there were 15 reactors operating in the region in 2011.

"As the fuel mix evolves and as threats change, there will be more ways that elements and regions of the BPS [high-voltage bulk power system] can fail," including extreme weather and cyber or physical attacks on grid facilities, DOE said.

#### **Energy interdependence**

Nuclear and coal plants, despite their on-site fuels, are not a fail-safe option, the staff said. "Nuclear and coal plants typically have advantages associated with onsite fuel storage compared to natural gas. While having fuel onsite reduces the risk that a generator will be unable to operate when needed, every type of fuel and power generation source has known vulnerabilities that can compromise its ability to perform reliably."

Many coal plants depend on rail, barges or trucks for coal delivery. "During the winter of 2013-2014, BNSF Railway rationed and limited coal deliveries to many of these generators due to construction and other disruptions. Stockpiles fell from 25 percent to 40 percent below normal levels at coal plants across the Midwest, Central, and Texas regions; many plants feared that they might not be able to rebuild their inventories in time to meet winter electric demands," DOE said.

Nuclear generators have "on-site" resources, too: The fuel rods inside reactors that last for 18 months to two years. But "fuel security" for reactors arguably includes mandatory water supplies to cool reactors. DOE noted that the Browns Ferry nuclear plant in Alabama had to cut output in half in 2010 because it was unable to draw enough water for its reactors because of environmental regulations.

Dominion Energy's North Anna reactors shut down immediately when hit with a 5.8 magnitude earthquake in 2011 and outside power was lost to its vital reactor cooling equipment. As designed, two emergency diesels came on at once to take over cooling. One failed after a few minutes, according to the Nuclear Regulatory Commission, but the remaining generator could handle the emergency, and Dominion reported it had others available. Some nuclear power critics treat outside power as an essential supply issue.



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#### **Pathways to resilience**

The decline of coal and the rapid expansion of natural gas and renewables alter ways the grid operators have handled routine days and emergencies for decades, so planning and operating responses are essential, DOE underscored.

There are other pathways to resilience beyond coal, the DOE staff said. Wind farms and solar units can also be configured to support resilience. But that can require new policies to assure they will also contribute essential reliability services such as voltage support when and where needed on the grid.

The Bonneville Power Administration was faced with an explosion in wind farms mostly along the Columbia River Gorge, with more than 4,000 megawatts added in 10 years, propelled by state renewable energy goals and tax credits, DOE said.

The amount of wind energy could swing by 1,000 MW in just one hour when clouds arrived or left. Coal plants are poorly equipped to react quickly to such swings, the staff said. Gas plants are fast-moving, provided they are not already operating at full power. The region's hydro dams are ideally suited to quick response, but their output can be restricted by demands for irrigation or protection of fish.

So BPA began charging wind farms when hydropower was needed for balancing and set up penalties to prompt more accurate wind power scheduling. The changes made a significant difference, BPA said.

The DOE staff study praised an analysis by PJM Interconnection, the grid operator in the Mid-Atlantic and eastern Great Lakes, which tested how various mixes of coal, gas, nuclear and renewable power would hold up under different stress scenarios.

The study did not elevate coal or nuclear as irreplaceable resiliency resources. The vital task was to get the right mix of generation and grid support systems to meet projected threats and challenges. "More diverse portfolios are not necessarily more reliable; rather, there are resource blends between the most diverse and least diverse portfolios which provide the most generator reliability attributes," DOE said.



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Paying generators to be ready for emergencies requires new market rules in many cases, DOE said. "More work is needed to define, quantify, and value resilience."

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#### 10. **DAKOTA ACCESS: Enviro call pipeline lawsuit an attack on free speech**

*E & E News, Aug. 25 | AP/Billings Gazette*

Environmental groups fighting a lawsuit by the developer of the Dakota Access pipeline are calling the suit an attack on free speech.

Energy Transfer Partners LP filed the lawsuit in a U.S. district court in North Dakota on Tuesday, alleging that Greenpeace, BankTrack and other groups engaged in "brand damaging campaigns" and unlawfully interfered with construction of the project (E&E News PM, Aug. 22).

The lawsuit also accuses the groups of using their campaign against the pipeline to solicit donations, an allegation that BankTrack called "outrageous."

"BankTrack considers the lawsuit an attempt ... to silence civil society organizations, and to curb their crucial role in helping to foster business conduct globally that protects the environment, recognizes the rights and interests of all stakeholders, and respects human rights," the group said in a statement.

Energy Transfer Partners criticized the responses from Greenpeace and BankTrack. Michael Bowe, one of the company's attorneys, said Greenpeace chose to attack the company's lawyers rather than defend "the truth of its challenged statements."

"Our laws hold accountable those who intentionally make demonstrably false statements, and there is no special exception for Greenpeace," Bowe said (AP/Billings Gazette, Aug. 24). — NS

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